IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1165 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRI RAMANBHAI HARIBHAI DABHI

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

1. Special Criminal Application No. 1165 of 2004

MS RUKHSANA M PATHAN for Petitioner No. 1

RULE NOT RECD BACK for Respondent No. 1-2

MS HANSA PUNANI ADDL PUBLIC PROSECUTOR for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 03/12/2004

ORAL JUDGEMENT

Heard learned counsel appearing on behalf of the

petitioner and Ms.Hansa Punani, learned APP for respondent - State.

2. The petitioner was served with notice as to why he should not be externed from the area mentioned in the noticed served to the petitioner under Section 59 of the Bombay Police Act. The notice to show cause indicates four different criminal proceedings registered against the present petitioner. Three of them, were registered in the year 2000 and one chapter case was filed in the year 2003. It is on record that the petitioner is also a social worker and is doing this activity, otherwise, he is earning his bread from doing agricultural labour work in a small village Janjarka. During the course of oral submissions, Ms.Rukhsana Pathan has submitted that wife of the present petitioner was once Sarpanch of their village and the petitioner being a social worker, he was taking cause of the villagers as well as from the backward class people, especially of scheduled caste. So on some occasions, he was compelled to come into conflict with certain people and therefoer, only chapter cases were registered.

Both the authorities have not considered following facts;

(1) he is not involved in any serious criminal offence;

(2) no offence punishable under Bombay Prohibition Act or Bombay Police Act which can be said to be of serious nature is ever registered against him;

(3) he has never disobeyed the order of public authority because no such criminal case is instituted against him.

(4) no adverse incident was registered in the year 2001 and 2002.

3. In view of the above fact situation, the authority should not have directed the petitioner to furnish solvent surety of Rs.25,000/- and that too of the person belong to category of servant serving with the Government. Normally the Government employees are not willing to be sureties in such proceedings, therefore, the orders passed by the externing authority and confirmed by the State Government would seriously prejudice the present petitioner because compliance would not be that easy. None of the family members of the

petitioner is a Government Servant. He could have been asked to furnish sureties of any two law abiding citizens of reasonable amount as the petitioner is hailing from economically backward class. Ms.Pathan has accepted that the petitioner being law abiding citizen, if directed to furnish surety of two any individual law abiding persons for Rs.5,000/- each and personal bond of the petitioner to the effect that he would not commit any offence in a given period of one year then he is ready to execute that bond, if so order.

4. The basic contention raised before the Court by the petitioner has a valid point. So it will be legally difficult for the Court to impose any condition and to direct the petitioner to furnish any surety or bond because there is absence of gravamen required to be established by cogent material. One letter received by the petitioner [Annexure-B at Page.13] dated 5th May, 2004 has created a situation that he can be even prosecuted for non compliance of the direction by the Magisterial authority. The time gap between the incident that has allegedly occurred in the year 2003 and the notice to show cause dated 30th January, 2004 also adversely affect the validity of the notice issued under Section 59 of the Act. The orders therefore under challenge passed by the learned Sub Divisional Magistrate, Dholaka and confirmed by the State Government are not found sustainable. The petition therefore is allowed.

5. Before parting with the order, the Court is inclined to observe that non initiation of the proceeding for breach of bond executed earlier on three different occasions by the petitioner has also created a valid point in favour of the petitioner for getting the orders under challenge set aside, otherwise, the authorities could have been initiated proceedings for forfeiture of the bond and imposition of fine. So the Court has reason to believe that he must have complied with the conditions imposed of the bond on all three occasions.

6. The petition is therefore allowed. The notice under challenge dated 30.1.2004 issued by the Sub Divisional Magistrate, Dholka Prant, Dholka, the order dated 5.5.2004 and the order passed in appeal by the appellate authority i.e. Joint Secretary, Home Department dated 29.9.2004 are hereby quashed and set aside.

Rule is made absolute accordingly.

Date : 3.12.2004 [C.K.Buch, J.]

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For the reasons stated in the judgment, the petition is allowed. The notice under challenge dated 30.1.2004 issued by the Sub Divisional Magistrate, Dholka Prant, Dholka, the order dated 5.5.2004 and the order passed in appeal by the appellate authority i.e. Joint Secretary, Home Department dated 29.9.2004 are hereby quashed and set aside.

Date : 3.12.2004 [K.P.Pachode]

Private Secretary